

**Summary**  
**Legislative Framework for Flood Control and Flood Risk Management**  
**in the Sacramento Valley**  
**Sacramento Area Flood Control Agency**  
**February 16, 2006**

**Legislative Framework**

- Identify expectations for the Sacramento River Flood Control Project (SRFCP)
- Establish minimum design standards for urban from non-urban levees
- Develop a capital improvement and maintenance program
- Establish guidelines for urban development in floodplains protected by the SRFCP that minimize risk and limit new sources of liability
- Clarify the criteria for holding government liable for flood damage
- Update the flood maps and notify affected property owners of risk
- Require all property owners in SRFCP protected areas to carry flood insurance

**Financial Considerations**

Provide sustainable for needed capital improvements and facilities maintenance from the following sources:

- State infrastructure bonds
- SRFCP benefit assessment district
- Federal contributions
- Contributions from other project beneficiaries

**TO: Sacramento Area Flood Control Agency  
Board of Directors**

**FROM: Timothy Washburn, Agency Counsel  
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**SUBJECT: RESOLUTION – ESTABLISHING A LEGISLATIVE FRAMEWORK  
FOR FLOOD CONTROL AND FLOOD RISK MANAGEMENT IN THE  
SACRAMENTO VALLEY**

**SUMMARY**

Resolution No. 06-018 establishes a policy framework for addressing pending State legislation on flood control and flood risk management in the Sacramento Valley through adoption of the white paper on these matters which was presented to the Board in November, 2005. This resolution will provide direction to staff in responding to the numerous pieces of legislation on flood control and flood risk management that are currently being considered by the Legislature. As set forth in the white paper, a unique confluence of circumstances including the decision in Paterno v. State of California, the devastation of the City of New Orleans by Hurricane Katrina, and increasing urban growth pressures have created an unprecedented need and opportunity for upgrading the State's plan for flood control in the Sacramento Valley. This effort should focus on the following objectives:

- Identifying appropriate design standards for Sacramento River Flood Control Project (SRFCP) facilities that distinguish between the flood protection needs of urban and rural areas;
- Developing a comprehensive flood risk management plan tied to these design standards that promotes appropriate land-use planning in SRFCP protected floodplains and augments the structural protections provided to property owners in these floodplains with a mandatory flood insurance requirement; and
- Creating a financing plan for the SRFCP that provides the capital outlays needed to achieve the adopted design standards for SRFCP facilities and the ongoing funding needed to operate and maintain these facilities.

Resolution No. 06-018 directs staff to work with other Sacramento Valley interests to pursue these objectives within the framework of the various bills under consideration by the Legislature.

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**DISCUSSION**

The SRFCP protects several hundred thousand acres of land within the floodplains of the Sacramento River and its tributaries in the Sacramento Valley. The majority of the protected area is comprised of reclaimed farmland, however a growing percentage of this area is converting to urban development through expansion of the Valley's historic urban concentrations into the surrounding countryside. Because of the extent of the protected area and the scale and integrated nature of the flood control system, the State of California (State) and the Federal Government have played key roles in the development of the SRFCP. The State's special relationship to the SRFCP was recognized in the Paterno decision, which held that the SRFCP was a 'state plan of flood protection' and the State could be held liable if the SRFCP, as designed, constructed, operated, and maintained, exposes a landowner to an unreasonable risk of harm and thus compels the landowner to contribute a disproportionate share of the cost of the project.

The court cited three primary factors indicating that the plaintiffs, who suffered damage when the south levee of the Yuba River failed during the 1986 flood, had been subjected to an unreasonable risk of harm. First, the State failed to make the capital investments necessary to ensure that the levee would safely convey the flows for which the SRFCP was designed; second, the State failed to ensure that the affected property owners understood the risks associated with the Linda levee; and third, the State failed to provide a mechanism for equitably distributing the financial risks associated with the SRFCP.

The State reacted to this decision by seeking new legislation in 2005 that sought to strengthen local levee maintenance and reporting requirements; improve flood risk notification procedures for property owners in protected floodplains; require flood insurance or at least the offer of flood insurance to these property owners; and create a Central Valley-wide assessment district that could finance the costs and absorb the liabilities of the flood control system. These proposals, which were offered in AB 1665, were not enthusiastically received and, although Hurricane Katrina added a new sense of urgency to the flood control issue at the end of the 2005 legislative year, the Legislature concluded its business without any action on the bill.

This urgency has carried over to the 2006 legislative year, and more than a half-dozen bills that address flood control in a substantial way are just now starting to be considered by the Legislature. (As the year unfolds, we expect several others hence the need for policy direction.) In addition to AB 1665, these bills include:

- AB 802, which requires cities and counties, when adopting or revising their general plans, to assess the extent to which planned development in floodplain areas is protected from reasonably foreseeable flooding in connection with floods up to a 1/200 per year chance of occurrence in any given year;

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- AB 1899, which requires cities and counties to ensure that any new development in a floodplain area will be protected against a 200-year flood within five years of the date the development is approved;
- AB 1898, which requires property owners in State-identified levee protection/inundation zones to maintain flood insurance, unless it is determined that the levees protecting the area provide at least a 200-year level of flood protection;
- ACA 13, which proposes that the people of the State vote to exempt assessments for the purpose of financing the capital or operation and maintenance costs of flood control and storm water or surface water drainage from the voting requirements of Proposition 218;
- AB 1839 and SB 1166, which propose that the people of the State vote in 2006 and again in 2010 to approve the issuance of bonds to finance improvements to flood control and water resource management systems, and require local levee maintenance agencies and cities and counties benefiting from the receipt of bond proceeds for flood control to indemnify the State for any and all liability for damages associated with the work financed by the bonds; and
- AB 1783, which establishes the intent of the Legislature with respect to the proposed issuance of bonds for local government infrastructure.

Although all of these bills address the flood control and risk management needs of the Sacramento Valley in some manner, they do not do so in a coherent or consistent manner. The legislative framework proposed in Resolution No. 06-018 addresses this problem and provides staff with direction to work with others in the Sacramento Valley to advance this framework in the Legislature. Toward this end, in early February, SAFCA was invited to brief the Legislation & Public Affairs and Land Use & Housing Committees of the Sacramento Area Council of Governments (SACOG) on the pending legislation and the SAFCA legislative framework. The Land Use & Housing Committee has recommended that Supervisor Dan Silva of Sutter County immediately form an ad-hoc Flood Management Committee (Committee) to work, in a support role, with SAFCA and other local flood control agencies to help the region develop a cohesive flood management strategy that can be used to advocate legislation and funding to address flood issues in the Sacramento region. It is hoped that the new Committee could bring back preliminary recommendations for discussion by the SACOG Board in March.

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**FINANCIAL AND POLICY CONSIDERATIONS**

The bills pending in the Legislature offer a unique opportunity to reinvent the SRFCP going forward into the 21<sup>st</sup> Century so as to appropriately address the flood control and flood risk management challenges facing the Sacramento area and the rest of the Sacramento Valley. If properly structured, the bills could provide the capital needed to provide the non-Federal share of the cost of providing Sacramento and the other urbanizing areas of the Valley with a 200-year level flood protection while providing the funding needed to adequately protect the rural areas of the Valley and to operate and maintain the shared facilities of the SRFCP over time.

**RECOMMENDATION**

Staff recommends that your Board approve Resolution No. 06-018, establishing a legislative framework for flood control and flood risk management for the Sacramento Valley and providing staff with direction to work with others in the Sacramento Valley to advance this framework in the Legislature.

## **RESOLUTION NO. 06-018**

Adopted by the Sacramento Area Flood Control Agency

### **ESTABLISHING A LEGISLATIVE FRAMEWORK FOR FLOOD CONTROL AND FLOOD RISK MANAGEMENT IN THE SACRAMENTO VALLEY**

WHEREAS, a unique set of circumstances, including the decision in Paterno v. State of California, the devastation of the City of New Orleans by Hurricane Katrina, and increasing urban growth pressures have created an unprecedented need and opportunity for upgrading the State's plan for flood control in the Sacramento Valley; and

WHEREAS, the Administration and members of the State Legislature have responded to these circumstances by drafting more than a half-dozen flood control and flood risk management bills for consideration in 2006; and

WHEREAS, all of these bills address some aspect of the flood control and risk management needs of the Sacramento Valley, a coherent and consistent approach to meeting these needs has yet to emerge; and

WHEREAS, SAFCA has a significant stake in focusing attention on the Sacramento Valley and promoting an understanding of the confluence of local, regional and statewide interest in improving the condition and management of the Sacramento River Flood Control Project.

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Sacramento Area Flood Control Agency that:

The document entitled Legislative Framework for Flood Control and Flood Risk Management in the Sacramento Valley, attached hereto as Exhibit A, is hereby adopted to provide policy guidance in connection with ongoing efforts to address these issues in the State Legislature, and Staff is directed to work with others in the Sacramento Valley to advance this framework.

ON A MOTION BY Director Moose, seconded by Director Christophel, the foregoing resolution was passed and adopted by the Board of Directors of the Sacramento Area Flood Control Agency, this 16<sup>th</sup> day of February 2006, by the following vote, to wit:

AYES: Directors: Christophel, Cohn, Collin, Dickinson, Fargo, Holloway,  
MacGlashan, Moose, Nottoli, Peters, Shiels, Silva,  
Tretheway

NOES: Directors:

ABSTAIN: Directors:

ABSENT: Directors:

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Chair of the Board of Directors of the  
Sacramento Area Flood Control Agency

(SEAL)  
ATTEST:

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Deputy Clerk of the Board of Directors  
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